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ONE HUNDRED SIXTH CONGRESS

# Congress of the United States

## House of Representatives

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December 15, 1999

The Honorable Nancy-Ann Min DeParle  
Administrator  
Health Care Financing Administration  
Department of Health and Human Services  
ATTNL HCFA-2006-P  
P.O. Box 8010  
Baltimore, MD 21244-8010

Dear Administrator DeParle:

I am writing to comment on the Department of Health and Human Services' (HHS) notice of proposed rulemaking (NPRM), issued on November 8, 1999, which is entitled "State Child Health: Implementing Regulations for the State Children's Health Insurance Program" (CHIP) (64 FR 60882). My comments specifically address HHS' proposed requirements for CHIP waiver requests by the States and generally address flexibility for the States in CHIP program administration.

HHS' NPRM states:

While the law permits the Secretary to use section 1115 authority to waive provisions of title XXI in order to pursue research and demonstration projects, **we do not believe it would be reasonable to exercise this authority before States have experience in operating their new title XXI programs and can effectively design and monitor the results of demonstration proposals ...** Therefore, we would consider a section 1115 demonstration proposal for waiver ... only after a State has had at least one year of CHIP experience and has conducted an evaluation of that experience (emphasis added) (64 FR 60894).

I am concerned that HHS' NPRM would unnecessarily limit State flexibility. I believe that such a limitation is inconsistent with Congressional intent for CHIP. Congress sought to maximize innovative solutions by the States to protect low-income children.

In a recent hearing conducted jointly by the Committee on Government Reform's Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs, which I chair, and Subcommittee on Government Management, Information and Technology, Representative Paul Ryan asked HHS Assistant Secretary and Chief

Financial Officer John J. Callahan, "What is the status of [CHIP waivers] right now? Didn't the statute have specific timeline requirements?" Mr. Callahan replied for the record that "The CHIP statute does not specify a time line on when to begin using this waiver authority." In fact, the statute neither specifies a time line nor insinuates any need for a delay or any other conditional requirement before a State can apply for a waiver and HHS can approve such a request.

HHS proposes to require a State that requests a waiver to have a minimum one-year implementation period and a completed evaluation of the State's implementation experience. I believe this is an unnecessary intrusion on State flexibility and should be eliminated. While I agree with Mr. Callahan's assessment that there is no time line specified legislatively, this absence should lead to the conclusion that there was no legislative intent to impose a waiting period or other such restrictions on the States. What is statutorily clear is that section 1115 waivers are applicable under the CHIP program and that Congress chose not to impose a minimum time period.

I also believe that HHS' NPRM violates the letter and spirit of President Clinton's recent Executive Order (E.O.) 13132. Section 7, Increasing Flexibility for State and Local Waivers, provides that "[e]ach agency shall, to the extent practicable and permitted by law, consider any application by a State for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State or local level." Section 7(c) provides that "[e]ach agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency." The Order does not include any language that authorizes conditions, such as time delays, on agency acceptance of State waiver requests.

Furthermore, since much innovation to date in the area of health care has been due to approved waivers for the States, it is incomprehensible to me that HHS would not immediately approve demonstration programs for States when they begin to implement CHIP. HHS' draft "Proposal Guide: Section 1115 State Health Care Reform Demonstrations," dated March 14, 1995, states, "State Medicaid waivers and demonstrations present valuable opportunities to both States and Federal policy makers to refine and test innovative policies and approaches that improve access to, and quality of care for, vulnerable Medicaid population, and to more effectively manage the costs of providing that care. One of the vehicles for States to test new approaches to health care is to obtain approval for Section 1115 demonstrations." Clearly, this avenue, which has worked successfully for Medicaid improvements, should be available for CHIP improvements as well.

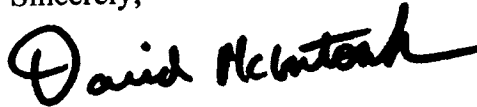
Instead, it has come to my attention that HHS has stymied several States in their attempts to secure waivers under CHIP. Three of these states -- Minnesota, Rhode Island, and Vermont -- have had approved CHIP implementation plans in existence for approximately a year. I do not understand why their waiver requests have not yet been approved.

Finally, I would like to address the issue of the timing of HHS' responses to State waiver requests. In order to be consistent with E.O. 13132, HHS should include language in the final rule that states its intent to render a decision, to the extent practicable and permitted by law, within 120 days of receiving a complete waiver application. Additionally, States have expressed to us their confusion surrounding HHS' processing requirements for their waiver requests. I recommend that HHS' final rule specify each step in the process and the maximum time expected between each step.

In sum, I believe that HHS' attitude toward CHIP waivers violates both Congressional and Presidential intent. Therefore, please make my recommended changes when finalizing the CHIP rule.

If you have any questions about this comment letter, please contact Clerk Gabriel Rubin at 225-4407.

Sincerely,

A handwritten signature in black ink that reads "David McIntosh". The signature is fluid and cursive, with the first name "David" being more prominent than the last name "McIntosh".

David M. McIntosh  
Chairman  
Subcommittee on National Economic Growth,  
Natural Resources and Regulatory Affairs

cc: The Honorable Dan Burton  
The Honorable Dennis Kucinich